

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 474 - SB 435

March 23, 2021

SUMMARY OF ORIGINAL BILL: Revises the offense of indecent exposure. Enhances the penalty for indecent exposure in instances where the defendant is over the age of 18 and the victim is under the age of 15 to a Class E felony. Enhances the penalty for indecent exposure in instances where the defendant is over the age of 18 with two of any of the outlined convictions and the victim is under the age of 13 to a Class C felony.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – \$202,500 Incarceration*

Decrease Local Expenditures – \$14,200/FY21-22 and Subsequent Years

SUMMARY OF AMENDMENT (005530): Adds language to the original bill to further expand the offense of indecent exposure to include a Class E felony offense of a defendant 18 years or older intentionally engaging in the exposure of a person's genitals, buttocks, or female breasts or masturbation in the intended presence of another within a residence for the purpose of attaining sexual arousal or gratification.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Expenditures – \$361,200 Incarceration*

Decrease Local Expenditures – \$15,100/FY21-22 and Subsequent Years

Assumptions for the bill as amended:

Indecent Exposure Misdemeanor Enhancements

- Pursuant to Tenn. Code Ann. § 39-13-511(b)(2), indecent exposure in instances where the defendant is over the age of 18 and the victim is under the age of 13 is a Class A misdemeanor offense.
- Based on information provided by the Administrative Office of the Courts (AOC), there has been an average of five Class A misdemeanor convictions of indecent exposure each year over the last five years. This analysis assumes that only 10 percent of misdemeanor

- convictions are at the state court level. As a result, it is estimated that there is a total of 50 convictions ($5 / 10\% = 50$) per year for Class A misdemeanor indecent exposure.
- The proposed legislation will result in 25 percent, or 13 ($50 \times 25\%$), of such convictions being enhanced to Class E felony admissions.
 - Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.80 percent per year for each of the past 10 years (from 2009 to 2019), yielding a projected compound population growth rate of 8.3 percent. Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for 1 ($13 \times 8.3\%$) additional admission for a total of 14 ($13 + 1$).
 - According to the DOC, 30.79 percent of offenders will re-offend within one year of their release. A recidivism discount of 30.79 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under the proposed legislation ($14 \text{ offenders} \times 30.79\% = 4 \text{ offenders}$).
 - According to the DOC, the average operating cost per offender per day for calendar year 2021 is \$80.46.
 - The average time served for a Class E felony is 0.6 years.
 - Pursuant to Tenn. Code Ann. § 9-4-210, 10 (14 – 4 recidivism discount) offenders will be admitted every year serving 219.15 days (0.60×365.25). The annualized increase in state incarceration expenditures is estimated to be \$176,328 ($\$80.46 \times 219.15 \times 10$).
 - This analysis assumes individuals convicted of a Class A misdemeanor offense of indecent exposure are spending an average of 15 days in local jail.
 - Based on the 2020 Fiscal Review Committee survey, the weighted average cost to local governments to house an inmate in a local jail facility is \$73 per day.
 - The proposed legislation will result in a recurring decrease in local incarceration expenditures estimated to be \$14,235 ($\$73 \times 13 \text{ offenders} \times 15 \text{ days}$) in FY21-22 and subsequent years.
 - Pursuant to Tenn. Code Ann. § 39-13-511(b)(1), indecent exposure is a Class B misdemeanor offense, unless the victim is under a certain age or a guard or staff member of a penal institution.
 - Based on information provided by the AOC, there has been an average of 24.8 Class B misdemeanor convictions of indecent exposure each year over the last five years. This analysis assumes that only 10 percent of misdemeanor convictions are at the state court level. As a result, it is estimated that there is a total of 248 convictions ($24.8 / 10\%$) per year for Class B misdemeanor indecent exposure.
 - The proposed legislation will result in five percent, or 12.4 ($248 \times 5\%$), of such convictions being enhanced to Class E felony admissions.
 - Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for 1 ($12.4 \times 8.3\%$) additional admission for a total of 13 ($12.4 + 1$).
 - According to the DOC, 30.79 percent of offenders will re-offend within one year of their release. A recidivism discount of 30.79 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have

committed the subsequent offense at the same felony level as under the proposed legislation (13 offenders x 30.79% = 4 offenders).

- Pursuant to Tenn. Code Ann. § 9-4-210, 9 (13 – 4 recidivism discount) offenders will be admitted every year serving 219.15 days (0.60×365.25). The annualized increase in state incarceration expenditures is estimated to be \$158,695 ($\$80.46 \times 219.15 \times 9$).
- This analysis assumes individuals convicted of a Class B misdemeanor offense of indecent exposure are spending an average of one day in local jail.
- Based on the 2020 Fiscal Review Committee survey, the weighted average cost to local governments to house an inmate in a local jail facility is \$73 per day.
- The proposed legislation will result in a recurring decrease in local incarceration expenditures estimated to be \$905 ($\$73 \times 12.4 \text{ offenders} \times 1 \text{ day}$) in FY21-22 and subsequent years.

Indecent Exposure Felony Enhancement

- Pursuant to Tenn. Code Ann. § 39-13-511(b)(3) indecent exposure in instances where the defendant is over the age of 18 with two of any of the outlined convictions and the victim is under the age of 13 is a Class E felony offense.
- Based on information provided by the Department of Correction, there has been an average of one admission for indecent exposure with two or more prior convictions each year over the past five years.
- Population growth and recidivism will not impact these admissions.
- The average time served for a Class C felony is 1.49 years. The average time served for a Class E felony is 0.60 years. The proposed legislation will result in each admission serving an additional 0.89 years ($1.49 - 0.60$).
- Pursuant to Tenn. Code Ann. § 9-4-210, one offender will be admitted every year serving 325.07 days (0.89×365.25). The annualized increase in state incarceration is \$26,155 ($\$80.46 \times 325.07 \times 1$).
- Pursuant to Tenn. Code Ann. § 39-13-511(b)(3) indecent exposure in instances where the defendant is over the age of 18 with two of any of the outlined convictions and the victim is under the age of 13 is a Class E felony offense.

Total Incarceration Impact

- The total annualized increase in state incarceration expenditures resulting from the proposed legislation is estimated to be \$361,178 ($\$176,328 + \$158,695 + \$26,155$).
- The total recurring decrease in local incarceration expenditures in FY21-22 and subsequent years resulting from the proposed legislation is estimated to be \$15,140 ($\$14,235 + \905).

*Tennessee Code Annotated, Section 9-4-210, requires that: *For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The script is cursive and fluid.

Krista Lee Carsner, Executive Director

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